

IN THE COURT OF THE I ADDL CIVIL JUDGE & JMFC.,
NELAMANGALA

PRESENT: Smt Chinmayee.R.H., B.A.L. LL.B.,
I Addl. Civil Judge & JMFC,
Nelamangala.

Dated this the 26th day of August 2020

O.S.No.9/2020

Plaintiff/s: Smt Thimmarajamma
W/o Sri Venkatesh,
Aged about 44 years,
R/at. Pete Beedi,
Thyamagondlu Town,
Thyamagondlu Hobli,
Nelamangala Taluk,
Bengaluru Rural District.

V/s

Defendant/s: 1. Smt Manjamma
W/o late Ganganna,
Aged about 61 years,
2. Sri Manjanna
S/o late Ganganna,
Aged about 40 years,

3. Sri Prakash
S/o late Ganganna,
Aged about 35 years,

All are R/at. 420/2A,
Agasara Beedhi,
Thyamagondlu Town,
Thyamagondlu Hobli,
Nelamangala Taluk,
Bengaluru Rural District.

PARTIES IN IA NO.2

Defendants/ Applicants: Smt Manjamma & Others

/Vs/

Plaintiff/Opponent: Smt Thimmarajamma

ORDERS ON IA.NO.2

The defendants have filed this application to permit them to amend the written statement and counter claim as per the proposed amendment.

2. In the affidavit annexed to the application, the defendant No.1 has sworn that the plaintiff has filed false and frivolous suit against the defendants to grab the

defendants' property and also to block the passage available to the defendants to reach their property towards the western side of the passage which is the only access to reach the defendants' property. The defendants herein are illiterate and lack legal knowledge and hence at the time of filing the written statement, the defendants have mistakenly mentioned the written statement's schedule property as the alleged passage. The same is not a passage but a vacant space left in the defendants' property bearing No.420/2A. The said fact came to the knowledge of the defendants only when the counsel for the defendants measured the defendants' property. The said bonafide mistake was not instructed by the defendants during the stage of written statement. After measurement of the defendants' property, the counsel for the defendants revealed that the vacant space available behind the house of 'A' schedule property towards western side is the part and parcel of the defendants' property and the same is not a passage. It is also sworn that the defendants are not introducing any new case and the proposed amendment is only for rectification of errors occurred by ignorance and thereby prays to allow the application.

3. The plaintiff has resisted the said application by filing objection. It is objected by the plaintiff thereby denying the

affidavit averments and submit that originally the suit schedule house belong to one Ganganarasaiah and he along with his son jointly executed a Sale Deed dated:25.04.1996 in favour of Shivanandappa. After the death of Shivanandappa, the property was transferred to his son Theerthaprasad. The said Theerthaprasad executed a Sale Deed in favour of the plaintiff vide Sale Deed dated:06.11.2009. Thus, the plaintiff is the absolute owner in possession of the property bearing No.397/3. It is submitted that the defendants are the neighbours and they are residing on the western side of the suit schedule property and now they are falsely trying to claim plaintiff's right, title and interest over the schedule 'B' and 'C' property thereby interfering with the plaintiff's peaceful possession and enjoyment of the schedule 'A', 'B' and 'C' property. The schedule 'B' and 'C' property comes within the boundaries of 'A' schedule property. On the southern side of the plaintiff's schedule property the defendants are trying to encroach 'B' schedule property and on the western side of the 'C' schedule of the plaint. The defendants have got a separate access to the road to their western side of the defendants to reach their house. The proposed amendment sought by the defendants is only fill the lacuna. The application not only changes the cause of action but also

the very nature of the suit and thereby prays to dismiss the application with exemplary cost.

4. Heard the learned counsels.
5. The following points arise for my consideration:
 1. Whether the proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties?
 2. What order?
6. Upon reading the affidavit, objection and the arguments canvassed my answer to the above points is as follows:
 - Point No.1 - In the Affirmative
 - Point No.2 - As per the final order for the following:

REASONS

Point No.1: The defendants have sought for amendment of the written statement at a very initial stage ie., even before the commencement of the evidence. Order 6 Rule 17 enunciates that the court may at any stage of the proceedings allow either to alter to amend his pleading in such manner and on such terms as may be just, and all

such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties, provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial.

8. This court has perused the proposed amendment sought by the defendants. A look into the proposed amendment it can be seen that the defendant is trying to explain the facts which are necessary for adjudication of the matter and has also sought for removal of the words 'B' and 'C' properties and also have sought for the amendment to the existing prayer for counter claim. The learned Advocate for the plaintiff in his objection has extensively mentioned about the facts of the case but the only grievance raised by the plaintiff is that the proposed amendment changes the nature of the suit and also takes away the admission. With regard to the change of the nature of suit, the amendment sought by the defendants does not do so. The defendant in contest to the claim of the plaintiff have only mentioned denial of the plaintiff's claim and have sought for a counter claim with respect to Declaration and injunction which is permissible under law. Hence, the contention of the plaintiff

that if the proposed amendment is allowed it changes the nature of the suit does not hold any water. It is the right of the defendants to claim and put forth their views as objection to the plaint averments. In the instant case the defendants have sought for amendment of the written statement at very early stage ie., even before the commencement of the trial. Therefore this court does not see any change of nature of suit.

9. The next contention taken up by the plaintiff with respect to withdrawal of admission does not hold any significance at this stage as in the written statement the defendants have only put forth their contentions even before the commencement of the evidence. While adjudication of an application for amendment of pleading the court should not look into the pros and cons of the suit.

10. The Advocate for the plaintiff has relied on several decisions which in the view of this court are inapplicable to the case on hand as the decisions speak about the amendment sought after the commencement of evidence. In the instant case the defendants have sought the amendment of the written statement well within the time prescribed under law.

11. Thus, the application filed by the defendants seeking amendment of their written statement is well within time and as objected by the learned Advocate for the plaintiff it does not change the nature of the suit nor takes away any admission. Hence, the application filed by the defendants deserves to be allowed and accordingly, I answer this point in the Affirmative.

Point No.2: For the reasons discussed supra, I proceed to pass the following:

ORDER

IA.No.2 filed by the
defendants under Order 6 Rule
17 CPC is hereby allowed.

For amendment and
amended written statement.

(Directly dictated to Stenographer through computer, revised and corrected
by me and then pronounced in the Open Court, on this, the 26th day of August 2020)

(Chinmayee.R.H.)
I Addl. Civil Judge & JMFC.,
NELAMANGALA.

